

FEB 15 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO HERNANDEZ OCAMPO;
et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-73171

Agency Nos. A75-487-180
A75-487-181
A75-487-182
A75-487-183
A75-487-184
A75-487-185

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 11, 2008**

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order denying petitioners' motion to reopen agency proceedings.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

The motion to proceed in forma pauperis is granted. The Clerk shall amend the docket to reflect this status.

Respondent's opposed motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Specifically, the regulations provide that a motion to reopen must be filed with the BIA within ninety days after the mailing of the BIA's decision. 8 C.F.R. § 1003.2(c)(2). Here, the motion was filed 761 days after mailing of the BIA's February 2, 2005 decision. Therefore, the BIA did not abuse its discretion when it denied petitioners' untimely motion to reconsider. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005) (holding that BIA denials of motions to reopen or reconsider are reviewed for abuse of discretion). Accordingly, this petition for review is denied in part.

To the extent that petitioners seek review of the BIA's denial of the motion to reopen *sua sponte*, this court lacks jurisdiction over this petition for review. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). Therefore, this petition for review is dismissed in part for lack of jurisdiction.

07-73171

All other pending motions are denied as moot. The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.